

REMARKS

Preliminary Remarks:

Upon entry of this Amendment, claims 1, 2, 4 to 6, and 8 to 23 will be pending of which claim 1 is independent. Claims 1, 2, 4 to 6, 8, 9, 12, and 20 are amended, claims 3 and 7 are cancelled without prejudice to, or disclaimer of, the underlying subject matter; and claims 21 to 23 are new. Support for the claim amendments and the new claims may be found in the specification as filed. *See, for example*, page 6, lines 20 to 24. Therefore, no new matter is added.

Claim Rejections:

Rejection under 35 U.S.C. § 101

Claim 20 was rejected under 35 U.S.C. § 101, as allegedly claiming non-statutory subject matter by stating a “use of” claim. Claim 20 has been redrafted as a product claim. Applicants respectfully submit that this rejection is moot and respectfully request its withdrawal.

Rejection under 35 U.S.C. § 102

Claims 1, 4, 15, 17, 18 and 20 were rejected under 35 U.S.C. § 102(b) as being anticipated by Smith *et al.* (U.S. Pat. No. 4,442,868). Independent claim 1 has been amended to incorporate the limitations of claims 3 and 7, which have been cancelled.

As amended, claim 1 discloses, *inter alia*, a casing that comprises polyamide or copolyamide and a further thermoplastic polymer or copolymer which is hydrophilic. Smith *et al.* do not disclose food casings made up of such a combination of materials. Therefore, Applicants respectfully submit that Smith *et al.* cannot anticipate claims 1, 4, 15, 17, 18 and 20 and respectfully request withdrawal of this rejection.

Rejection under 35 U.S.C. § 103

The burden is on the examiner to make a *prima facie* case of obviousness, which requires an objective analysis as set forth in *Graham v. John Deere Co.*, 383 U.S. 1 (1966). In *KSR International v. Teleflex Inc.*, 550 U.S. 398, 82 USPQ2d. 1385 (2007), the U.S. Supreme Court affirmed that this analysis includes the following factual inquiries:

- (1) determining the scope and content of the prior art;

- (2) ascertaining the differences between the claimed invention and the prior art; and
- (3) resolving the level of ordinary skill in the pertinent art.

Further, the *Examination Guidelines for Determining Obviousness Under 35 U.S.C. § 103 In View of the Supreme Court Decision in KSR International Co. v. Teleflex Inc.* (USPTO Guidelines) state that, having undertaken the factual inquiries of *Graham*, a rejection under 35 U.S.C. § 103 may be supported by one or more of the following rationales:

- (1) combining prior art elements according to known methods to yield predictable results;
- (2) simple substitution of one known element for another to obtain predictable results;
- (3) use of a known technique to improve similar methods in the same way;
- (4) applying a known technique to a known method ready for improvement to yield predictable results;
- (5) choosing from a finite number of identified, predictable solutions, with a reasonable expectation of success;
- (6) variations that would have been predictable to one of ordinary skill in the art; and
- (7) some teaching, suggestion, or motivation in the prior art that would have led one of ordinary skill to modify the prior art reference or to combine the prior art reference teachings to arrive at the claimed invention.

72 Fed. Reg. 57526, 57529 (October 10, 2007).

Each of the above-noted rationales requires predictability in the art and/or a reasonable expectation of success, and the Examiner must consider objective evidence that rebuts such predictability and reasonable expectation of success. The objective evidence or secondary considerations may include unexpected results and/or failure of others (*e.g.*, evidence teaching away from the currently claimed invention), evidence of commercial success, and long-felt but unsolved needs, as found in the specification as-filed or other source. *Id.* When considering the obviousness of a combination of known elements, the operative question is "whether the improvement is more than the predictable use of prior art elements according to their established functions." *KSR*, 550 U.S. at ___, 82 USPQ2d. at 1396.

Claims 2, 3, 6, 7, 9, 10, 13, 14 and 16 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Smith *et al.* in view of Okudaira (U.S. Pat. No. 6,294,263). Claims 3 and 7 are

cancelled, and Applicants respectfully traverse this rejection with respect to claims 2, 6, 9, 10, 13, 14 and 16.

The Examiner admits that Smith *et al.* do not disclose a smoke- and water-vapor-permeable food casing which comprises at least one aliphatic polyamide and at least one thermoplastic other polymer wherein the mixture additionally contains at least one organic or inorganic filler wherein the filler based on the total weight is not greater than 40%. Office Action at page 4. Applicants also note that Smith *et al.* do not disclose a food casing that is tubular. Okudaira teaches a polyamide laminated film having high oxygen gas barrier properties (column 1, line 4 to 57). In other words, Okudaira does not teach a film or casing that is permeable.

Applicants respectfully submit that one of ordinary skill in the art would not combine the teachings of Smith *et al.* and Okudaira when Okudaira teaches away from a smoke and water-vapor permeable food casing. Contrary to the food packaging film taught by Okudaira, the food casing claimed is permeable for oxygen. In other words, the claimed food casing's properties are opposite from those of the food packaging film taught by Okudaira.

In conclusion, Applicants respectfully submit that claims 2, 6, 9, 10, 13, 14, and 16 are not unpatentable over Smith *et al.* in view of Okudaira and request withdrawal of this rejection.

Claims 10 to 12 and 14 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Smith *et al.* in view of Okudaira, further in view of Hutschenreuter *et al.* (U.S. Pat. No. 4,528,225). Applicants respectfully traverse this rejection.

Applicants have discussed Smith *et al.* and Okudaira, *supra*. The Examiner has cited Hutschenreuter *et al.* for inorganic or organic fillers. However, Hutschenreuter *et al.* teach cellulose casings having a longitudinal seam, where the overlapping edges of the longitudinal seam are bonded together using a film strip and an adhesive. It is the adhesive which may contain fillers such as kaolin, glass beads, chalk, quartz powder and the like (column 7, lines 42 to 49), not the polymer casing. The adhesive layer is present only in the area in which the film strip is applied, *i.e.*, underneath the film strip. Accordingly, the filler particles do not form part of a polymer casing.

Applicants respectfully submit that combination of Smith *et al.*, Okudaira, and Hutschenreuter *et al.* does not disclose all the elements of claims 10 to 12 and 14. Therefore, Applicants respectfully request withdrawal of this rejection.

Claim 8 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Smith *et al.* in view of Okudaira, further in view of Anderson *et al.* (U.S. Pat. No. 6,231,970). Applicants have discussed Smith *et al.* and Okudaira, *supra*. Andersen *et al.* describe the behavior of granules of native starch when treated with water and polar solvents (column 19, lines 13 to 33). However, Andersen *et al.* do not teach a water-soluble organic polymer which swells under the action of water or water vapor, as claimed in claim 8.

Therefore, Applicants respectfully submit that combination of Smith *et al.*, Okudaira, and Andersen *et al.* does not disclose all the elements of claim 8 and respectfully request withdrawal of this rejection.

Claim 5 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Smith *et al.* in view of Okudaira, further in view of Delius *et al.* (U.S. Pat. App. Pub. No. 2002/0065364). Applicants respectfully traverse this rejection.

Applicants respectfully submit that the Examiner's combination of Smith *et al.*, Okudaira, and Delius *et al.* is based on impermissible hindsight. Smith *et al.* describe cellulose casings and only incidentally mention that casings of other material, such as nylon, may be utilized in the invention as long as they can be impregnated with the alkaline liquid smoke. Smith *et al.* do not disclose casings made up of a mixture or blend of polymers. Okudaira on the other hand teaches an at least two-layered laminated film with high oxygen barrier properties. Layer B in the laminated film is mainly composed of a polymer mixture, (column 2, lines 24 to 27). The film of Okudaira has a high transparency (column 1, line 58). Not only is impregnation with liquid smoke not disclosed, but such impregnation would strongly impair the transparency. Therefore, one of ordinary skill in the art would not have combined the teaching of Smith *et al.* with that of Okudaira.

Delius *et al.* do not overcome the deficiencies of Smith *et al.* and Okudaira. There is no mention in Delius *et al.* about *any* impregnation of the sausage casing, and therefore, it is clear that Delius *et al.* cannot teach impregnation with liquid smoke. Delius *et al.* also do not mention smoke and water vapor permeability. Therefore, Applicants respectfully submit that the combination of Smith *et al.*, Okudaira, and Delius *et al.* does not render claim 5 unpatentable and respectfully request withdrawal of this rejection.

Claim 19 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Smith *et al.* in view of an Internet printout of Basic Sausage Making Process. Applicants respectfully traverse this rejection.

In addition to all the limitations of Smith *et al.* listed *supra*, this reference teaches a regenerated cellulose sausage casing impregnated with liquid smoke and disclose casings made of other polymeric materials only in general terms. Casings made from a mixture of (co)polyamide and a further hydrophilic polymer, in which the (co)polyamide forms the coherent phase and the hydrophilic polymer forms the dispersed phase are not within the scope of Smith *et al.* The Internet printout of the Basic Sausage Making Process does not overcome the deficiencies of Smith *et al.* All the Internet printout of the Basic Sausage Making Process does is disclose the basic steps for producing a sausage. Smoked sausages or casings comprising smoke are not envisaged.

Applicants respectfully submit that it is not apparent how a combination of the teaching of Smith *et al.* with that of the Internet printout of the Basic Sausage Making Process would lead one of ordinary skill in the art to the method claimed in claim 19. Therefore, Applicants respectfully submit that claim 19 is not unpatentable over Smith *et al.* in view of the Internet printout of Basic Sausage Making Process and respectfully request withdrawal of this rejection.


CONCLUSION

In view of the amendments and remarks above, Applicants respectfully submit that this application is in condition for allowance and request favorable action thereon. The Examiner is invited to contact the undersigned if any additional information is required.

As this response is filed within the statutory period for reply, Applicants believe that no fee, other than the appropriate extension of time, is due. If additional fees are required, they may be charged to Deposit Account No. 50-4254, referencing Attorney Docket No. 2901886-000025.

Respectfully submitted,

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